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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,313	09/17/2003	Richard Caldwell	10069-0001US	4166

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EXAMINER

STASHICK, ANTHONY D

ART UNIT PAPER NUMBER

3728

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

5P

Office Action Summary	Application No. 10/664,313	Applicant(s) CALDWELL, RICHARD	
	Examiner Anthony Stashick	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7-10, 12 and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Marc 5,706,589 or Amir et al. 5,673,498.

Marc '589 discloses all the limitations of the claims including the following: a platform 12 for supporting a wearer's foot and engaging an underlying surface; the platform having a rear heel region 14 for engaging a wearer's heel; a sole region 16 forwardly of the heel region for engaging a portion of a wearer's foot including the ball and toes of a wearer's foot; a fluid assembly 15, 32, 17, 50 comprising a first chamber 15 containing a first quantity of a first fluid; the fluid assembly provided on the platform and configured so that as the wearer of the footwear piece walks or runs, the wearer's heel is caused to apply force to the first chamber that causes at least a portion of the first quantity of the first fluid to be discharged from the first chamber in such a manner that impact forces imparted from the platform to the wearer's heel are absorbed (see Figures 1-5); the fluid assembly comprises a second chamber 17 into which the discharged fluid from the first chamber flows; there is a restriction 50 provided between the first and second chambers that controls the flow of the fluid from the first chamber to into the second chamber (adjustable valve); the restriction is defined by a valve 50; the valve is adjustable to vary the rate at which fluid flows from the first chamber into the second chamber for a given pressure in the

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first chamber (see col. 4, lines 28-59); the second chamber 17 is provided on the platform and configured so that as the wearer of the footwear piece walks or runs the ball of the wearer's foot is caused to apply a force to the second chamber that causes the fluid in the second chamber to be discharged into the first chamber (see Figures 1-5); the fluid is liquid or gas (pneumatic bladder, see col. 4, lines 10-20); the first chamber 15 is defined by a bladder made from at least one reconfigurable sheet layer (see Figures 1-5); the fluid flows in a first path in a first flow direction from the first chamber to the second chamber 32 and oppositely to the first flow direction in the first flow path flowing from the second chamber to the first chamber; the fluid assembly is repositionable relative to the platform to be installed in and separable from the platform as a unit (see Figures 1-5); the fluid assembly comprises a closed system within which the first fluid circulates (see Figures 1-5). With respect to claims 15-20, the typical use of the invention of Marc '589 would meet these limitations as all the structure is present and the bladder operates in this fashion.

Amir et al. '498 discloses all the limitations of the claims including the following: a platform 2 for supporting a wearer's foot and engaging an underlying surface; the platform having a rear heel region for engaging a wearer's heel (see Figure 1); a sole region forwardly of the heel region for engaging a portion of a wearer's foot including the ball and toes of a wearer's foot (see Figure 1); a fluid assembly 8, 7, 6 comprising a first chamber (8 in the heel) containing a first quantity of a first fluid; the fluid assembly provided on the platform and configured so that as the wearer of the footwear piece walks or runs, the wearer's heel is caused to apply force to the first chamber that causes at least a portion of the first quantity of the first fluid to be discharged from the first chamber in such a manner that impact forces imparted from the

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platform to the wearer's heel are absorbed (see Figures and col. 2, lines 15-26); the fluid assembly comprises a second chamber (8 in forefoot section) into which the discharged fluid from the first chamber flows; there is a restriction 6 provided between the first and second chambers that controls the flow of the fluid from the first chamber to into the second chamber; the restriction is defined by a valve 6; the valve 6 is adjustable to vary the rate at which fluid flows from the first chamber into the second chamber for a given pressure in the first chamber (see col. 2, lines 8-12); the second chamber (8 in the forefoot area) is provided on the platform and configured so that as the wearer of the footwear piece walks or runs the ball of the wearer's foot is caused to apply a force to the second chamber that causes the fluid in the second chamber to be discharged into the first chamber (see Figures 1 and 2); the fluid is liquid or gas (see col. 2, lines 1-12); the first chamber 8 is defined by a bladder made from at least one reconfigurable sheet layer; the fluid flows in a first path 7 in a first flow direction from the first chamber to the second chamber and oppositely to the first flow direction in the first flow 7 path flowing from the second chamber to the first chamber; the fluid assembly is repositionable relative to the platform to be installed in and separable from the platform as a unit (see Figures); the fluid assembly comprises a closed system within which the first fluid circulates (see col. 2, lines 1-12). With respect to claims 15-20, the typical use of the invention of Amir et al. '498 would meet these limitations as all the structure is present and the bladder operates in this fashion.

3. Claims 1-4, 6-7 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al. 4,446,634. Johnson et al. '634 discloses all the limitations of the claims including the following: a platform 16 for supporting a wearer's foot and engaging an underlying surface

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(sole of the shoe); the platform having a rear heel region for engaging a wearer's heel (see Figure 1); a sole region forwardly of the heel region for engaging a portion of a wearer's foot including the ball and toes of a wearer's foot (see Figure 1); a fluid assembly (18, 20, 22, 24, 26, 34) comprising a first chamber 18 containing a first quantity of a first fluid; the fluid assembly provided on the platform and configured so that as the wearer of the footwear piece walks or runs, the wearer's heel is caused to apply force to the first chamber that causes at least a portion of the first quantity of the first fluid to be discharged from the first chamber in such a manner that impact forces imparted from the platform to the wearer's heel are absorbed (see Figures 3-5); the fluid assembly comprises a second chamber 20 into which the discharged fluid from the first chamber flows; there is a restriction 26 provided between the first and second chambers that controls flow of fluid from the first chamber into the second chamber; the restriction is defined by a valve 26; the valve restricts fluid flow from the first chamber into the second chamber to a greater extent than the fluid from the second chamber into the first chamber (controlled by 34); the second chamber 20 is provided on the platform and configured so that as a wearer of the footwear piece walks or runs the ball of the wearer's foot is caused to apply a force to the second chamber that causes fluid in the second chamber to be discharged into the first chamber (see Figures 3-5); the fluid flows in a path 56 from the first chamber to the second chamber and in a second path 48 spaced from the first path from the second chamber to the first chamber.

4. Claims 1, 3-4 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Litchfield et al. 6,505,420. Litchfield et al. '420 discloses all the limitations of the claims including the following: a platform 118 for supporting a wearer's foot and engaging an

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underlying surface (part of the sole); the platform having a rear heel region for engaging a wearer's heel (see Figure 5); a sole region forwardly of the heel region for engaging a portion of a wearer's foot including the ball and toes of a wearer's foot (see Figure 5); a fluid assembly 10 comprising a first chamber 26 containing a first quantity of a first fluid; the fluid assembly provided on the platform and configured so that as the wearer of the footwear piece walks or runs, the wearer's heel is caused to apply force to the first chamber that causes at least a portion of the first quantity of the first fluid to be discharged from the first chamber in such a manner that impact forces imparted from the platform to the wearer's heel are absorbed (pressure applied to heel chamber forces fluid into forefoot chamber); there is a restriction 74 provided between the first and second chambers that controls the flow of the fluid from the first chamber to into the second chamber; the restriction is defined by a valve (see 74); the valve comprises a living hinge (portions 58, 68).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick
Primary Examiner
Art Unit 3728

ADS